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March 7, 2009

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

**Re: Comments on Petitions for Declaratory Ruling
Regarding Public, Educational and Governmental Programming
CSR-8126, CSR-8127, CSR-8128
MB Docket No. 09-13**

Dear Ms. Dortch:

Attached please find an original and four copies of the **Comments of the City of Warren, Michigan** and **Certificate of Service** relating to the above-noted petitions.

Should you have any questions or require further information, please feel free to contact the undersigned at (586) 574-4585 or mmichaels@cityofwarren.org.

Thank you for your attention to this matter.

Respectfully,

Mary Michaels
Assistant City Attorney

MM/e/FCC Programming

cc: Ms. Holly Sauer, FCC Media Bureau
Mr. James N. Horwood, Attorney for Petitioner
Ms. Theresa S. Decker, Attorney for Petitioner
Mr. Joseph Van Eaton, Attorney for Petitioner
Mr. Michael J. Watza, Attorney for Petitioner
Mr. Michaels Ashton, Attorney for Comcast
Ms. Lark Samouelian, Warren Communications Director

No. of Copies 044
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petitions for Declaratory Ruling Regarding
Public, Educational, and Governmental
Programming

MB Docket No. 09-13
CSR-8126, CSR-8127, CSR-8128

**COMMENTS OF THE CITY OF WARREN, MICHIGAN
IN SUPPORT OF PETITIONS FOR DECLARATORY RELIEF**

The City of Warren, Michigan submits these comments in support of each of the above noted petitions. As many communities, Warren has been struggling with the uncertainty of the digital transition's impact upon public, educational and governmental (PEG) programming and channels and the cable operators' obligations to subscribers with respect to PEG support. We are also frustrated by our aimless attempts to obtain the qualitative carriage of public, educational and governmental programming over the AT&T U-Verse television system.

The City of Warren has an apparent vested interest in the outcome of the petitions. We are a co-petitioner in the Petition for Declaratory Ruling, CSR-8126. We are also a franchising authority that is struggling with many of the issues raised in the petitions of the City of Lansing and the Alliance for Community Media, et al., CSR 8127 and CSR 8128. The purpose of these comments is to voice the concerns of this community based upon our experience with the issues raised in the petitions, and to provide whatever input may be helpful to the proceedings.

PROFILE AS A FRANCHISING AUTHORITY

The City of Warren is the third largest city in the State of Michigan with a population of 138,247. Warren's senior population is 27,909.¹ Warren has a six public school districts within its geographical boundaries.

Warren is served by three cable operators – Comcast Cablevision, Wide Open West, and, more recently, AT&T, which applied for a state franchise issued under the Uniform Video

¹ Figures based upon the 2000 U.S. Census.

Service Local Franchise Act, Public Act 480 of 2006, MCL 484.3301, et. seq. (State Franchise Act)

Comcast was granted the first franchise in 1979. The franchise was renewed on March 12, 2002, and its term extends until March 12, 2016.

The second franchise was granted to Ameritech New Media on June 24, 1997, and was later assigned and assumed by WideOpenWest, Michigan, LLC on December 31, 2001.

AT&T is the third franchisee. AT&T applied for the State Franchise Act in April 2007. Warren acknowledged the application, subject to a resolution of its rights under law, including the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Policy Act of 1992. Pursuant to the State Franchise Act, the franchise automatically took "effect" by default 30 days after the application.

Comcast and WOW each provide the City of Warren with four (4) public, governmental and educational channels (PEG) and the facilities and equipment for the use of the channel capacity. By contrast, AT&T is willing to provide channel capacity, but not the facilities to enable the PEG programming to be aired over the channels. Comcast and WOW systems, and, at no expense to Warren, provided the feeds and transmitters to enable Warren to carry the PEG programming over their systems. Comcast and WOW also configured their systems to allow each of the six school districts to broadcast programming within the geographical boundaries of its school system. This accommodates the air time requirements of each school system, promotes educational production experience for youths, and provides a forum of expression for the school districts and the school children. In addition, parents and other residents may enjoy view high school sporting events, school play, concert and other performances, and school boards meetings.

Comcast and WOW also provide free cable drops to schools and to various locations within the City, and each cable operator provided Warren in monetary and in-kind support for PEG operations, in addition to franchise fees. WOW also provided certain equipment to each school district to assist with the broadcast of educational programming.

Of specific relevance to the subject petitions, both Comcast and WOW committed to the location of the PEG Channels in the respective franchise agreements with Warren.

Comcast made a contractual commitment to keep Channel 5 and Channel 12 available for the delivery of governmental or local programming for the term of the Franchise. Comcast agreed that "Such channels shall keep the same channel assignment for the duration of the Franchise term." Section 7.1 of the Agreement is attached. Comcast also agreed that the educational channels, Channels 20 and 22 would not be moved to a channel designation above 30, and if moved, Comcast would pay for costs a community would incur as a result of such channel relocation.

WOW also agreed that the initial three PEG channels, Channels 10, 15 and 18, would keep their channel location throughout the term of the Franchise. Section 7.2 of the Ameritech New Media franchise agreement, a copy of which is attached.

Warren is a community with sophisticated and active PEG programming operations. The City of Warren has a fully staffed Communications Department specifically committed the management and development of quality PEG operations and the dissemination of community information. Warren has an equipped studio, state-of-the-art production equipment, and a mobile studio van equipped with the latest technological equipment and facilities. These operations provide the citizens with informative and pertinent community programming. It is only through the PEG channel availability that Warren residents depend upon live and taped cablecasts of City Council meetings, planning commission and board of appeals meetings. The citizens receive other valuable programs such as local news broadcasts, candidate forums and debates, live election results shows, and sports call-in shows, public interest forums. Citizens also are kept informed and updated about city services, emergencies and non-profit organizations' announcements through scrolled bulleting announcements. The school districts rebroadcast school board meetings and high school sporting events as well as informational bulletins and other quality programming.

Warren, Michigan is commonly known for its politically active population. The access to local and governmental programming over the PEG channels is taken seriously by the residents, who want to keep informed about local events, politics and the actions of the legislative bodies. It is essential to this community to maintain access to local PEG community programming without having to incur additional costs or inconvenience.

Petition for Declaratory Relief: CSR 8216

Warren encourages the Commission to accept and adopt all factual and legal assertions made in the above noted Petition, and grant the requested relief.

Essentially, the Petition raises the challenging issues concerning how the cable operators' obligations to make PEG access available to subscribers should apply within the regulatory framework of the digital broadcasting world.

At a minimum, PEG channels should be treated the same as all channels on the basic tier, including the broadcast channels, and the PEG channels should continue to be made available at no added cost to subscribers and in accordance with franchise agreements.

At the outset, cable operators are allowed to use public rights-of-way in order to conduct their business. Comcast has grown to become a cable giant. In return for the use of valuable property, Comcast and like providers should be required to make whatever accommodations are technically possible to keep the PEG channels available without additional equipment or cost to residents. We understand that franchise fees are paid for the rights-of-way, but these fees are passed on to subscribers, so the franchise fee is not realistically "compensation" for the use of the right-of-way. What is of value to our residents is the continuation of the PEG programming.

On January 15, 2008, the Comcast PEG channels would have been blacked out but for the lawsuits filed in connection with the Petition. After giving customers a 30-day notice that the channels would be migrated to the 900s, Comcast offered special promotions for one converter box, for a limited period, however the supply was low and difficult to obtain. The 30-day notice was not sufficient to enable most people, particularly senior citizens to obtain the box and figure

how to connect the converter. A converter box must be rented for each television receiver in a household. After the promotional periods end, the approximate monthly cost to rent a box would be over\$4.00 for each television receiver. This is a dramatic cost increase in the context of today's economy; and one our many seniors and residents could not and should not be required to afford.

We recognize that change is a part of life; but the value of PEG programming, and the citizen's expectations regarding PEG access, is universally consistent. The programming should not be a casualty in the technological advancements that come with the digital conversion.

The Honorable Victoria Roberts has ruled that the Michigan Uniform Video Service Local Franchise Act is preempted by federal cable law, and that franchise commitments may be enforced. See Exhibit H and Exhibit L of the Petition. According to the Judge's order, the franchise commitments with respect to PEG channel positions should remain intact regardless of the State Franchise Law requirements. In Warren, the low channel position promised by Comcast, is significant to our residents and was a bargained-for component of our franchise agreement. Any change to the channel position would also incur unnecessary cost to the communities. In Warren, we would have to change the sign on our mobile studio van, letterhead, city calendar, newsletters, city signs, not to mention cost and inconvenience to the school districts. We realize this is a matter of comfort as well as cost, but maintaining that comfort for our senior population is our mission as stewards of public information.

We recognize the business concerns of Comcast, but the company may achieve its desired business goals through other options, or even from other technological means. PEG is not a sacrificial or dispensable commodity. Any regulatory policy developed for digital television should ideally incorporate the necessary protections for this invaluable public resource.

CSR 8127 and CSR 8128

The Petitions for Declaratory Relief filed by the City of Lansing and the Alliance for Community Media, et al. raise issues regarding the treatment of PEG programming over the

AT&T U-Verse cable system. The petitions allege that PEG is unfairly given discriminatory treatment in the inferior delivery and transmission. Each petition thoroughly and accurately describe the methods for delivery of PEG and the resulting inferior broadcast quality and the difficulty in channel selection.

Warren has not yet activated PEG programming over the AT&T system, for reason to be explained below. However, we have viewed PEG programming of an adjacent community over the AT&T system.

The delivery is via the internet; it is not yet broadcast quality. The hunt to find the PEG channels in effect a project, and insurmountable for most average laypersons. We will not belabor the many nuances involved in the selection process to locate the programming, as they were aptly and superbly discussed in the petitions. We will emphasize, however, that even once the correct PEG channel is located and accessed with the remote, channel content often drops off the screen or does not appear. This is an example of editorial control and disparate treatment asserted in the Petitions.

A T & T has not refined its picture quality of PEG programming; the compression results in a "buffering" distortion of picture. This indicates a need further upgrades.

Another problem with encountered with AT&T is the compression of all PEG programming for all communities within a designated market area into just one portal. The format makes its impossible for the communities to be given the reassurance that PEG programming will be aired without interruption; one error by AT&T would eliminate all PEG programming. One portal is technologically infeasible and insufficient.

AT&T contents that PEG obligations are satisfied by merely allowing communities to have capacity on its system. The carriage of PEG programming over the dedicated capacity is the communities' problem, which could be partially resolved through payment to AT&T (or another provider) of more than \$500 a month.

AT&T representatives have indicated that AT&T has no obligations to provide the distribution or transmission facilities or any other facilities to enable communities to carry PEG

programming over its system based upon the Michigan Uniform Video Service Local Franchise Act (State Franchise Law).

AT&T system would benefit from the availability of PEG programming on its system, and the resulting enticement to prospective subscribers. Its corporate perspective, however, is that the franchising authority is a delivery service instead of the content provider of the valuable public information.

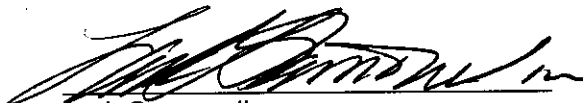
Judge Roberts ruled that the U.S. Cable Communications Policy Act, 47 USC 521, et seq., and its PEG access requirements, preempt the State Franchise Law. The Communications Act defines "PEG access facilities as: "A) channel capacity designated for public, educational or governmental use; and B) facilities and equipment for the use of such channel capacity." 47 USCS 522(16). In addition, a federal district court ruled that AT&T's U-Verse IPTV service meets the legal definition of 'cable service" under the Cable Communications Policy Act, 47 USC 521, et seq. *Office of Consumer Counsel vs. Southern New England Telephone Company*, 502 F Supp 277, 515 F. Supp. 269 (D. Conn. July, 2007). Reconsideration denied. Warren has a Cable Franchise Regulatory Ordinance, Warren Code of Ordinances 80-512 which defines PEG programming to mean both channel capacity and the facilities and equipment for the use of channel capacity.

AT&T should be held to franchise requirements of the franchising authority with regard to the facilities for PEG capacity, and the FCC franchise application requirements of 47 USC 541 which include provisions for PEG channel capacity and support, and facilities. Conversely, AT&T should be required to deliver PEG programming in accordance with same quality standards of other programming on its system and any higher standards established by the FCC regulations, and the local franchising authorities in accordance with their rights under federal cable laws. Although not specifically addressed in these comments, the same reasoning applies to our support for a ruling that AT&T abide by FCC regulations concerning closed captioning and emergency alert.

CONCLUSION

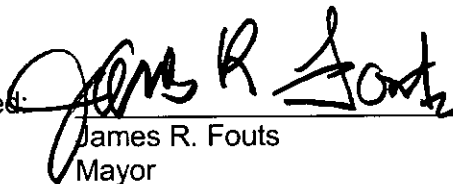
For the reasons stated above, the City of Warren urges the Commission to grant the three Petitions for Declaratory Relief.

Respectfully Submitted,

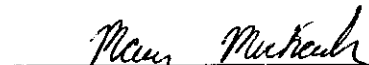


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B. If any subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate portion of any prepaid subscriber service fee, using the number of days as a basis, shall be refunded to the subscriber by Grantee.

6.5 Subscriber Rebates. Grantee shall rebate charges for the period a loss of service is experienced by a subscriber, unless restoration is prevented by cause beyond the control of the Grantee. Such rebate shall be made by the Grantee following notification to the Grantee by the subscriber identifying the loss of service by channel description and date and time, and such loss of service is verified by Grantee.

6.6 Covenant not to Discriminate. Consistent with applicable law, Grantee covenants that Grantee shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, or marital status.

SECTION 7. SUPPORT FOR LOCAL CABLE USAGE

7.1 Public, Educational and Government (PEG) Programming Channels

A. Grantee shall make available four (4) PEG channels for non commercial PEG programming as follows.

1. Channel 5 and Channel 12 shall be made available for the delivery of governmental and/or local programming throughout the City for the term of the Franchise. Such channels shall keep the same channel assignment for the duration of the Franchise term.

2. Subject to subsections 7.2(C) and (D), two (2) PEG channels shall be made available for educational programming, and shall have the initial channel designation of Channel 20 and Channel 22. Such channels shall not be moved without at least thirty (30) days written notice to the City. Grantee shall reimburse the City for reasonable out-of-pocket costs incurred as a result of channel relocation up to \$ 500 per occurrence, and shall further provide subscribers with at least thirty (30) days' advance written notice of such relocations. Such PEG channels shall not be relocated to a channel higher than the designation of channel 30.

B. Grantee may use such additional channel capacity or any portion thereof at any time that it is not being used by the City; provided however, that notwithstanding Grantee's right to use said PEG channel capacity in the event that it is not being used by the City, at such time as the City requests its return, Grantee shall comply with that request and return or otherwise provide the additional PEG channel capacity within sixty (60) days of the date of the City's request.

C. The City has sole discretion to determine rules for the use of the local public, educational and government channels. At any given time, the City reserves the right to change, eliminate or discontinue either public, governmental and/or educational programming on the PEG channels within the City. In the event the City's re-designation of programming requires Grantee to install new wiring, Grantee will not be responsible for the re-wiring costs that may be required

6.5 Subscriber Rebates. Grantee shall rebate one-thirtieth (1/30th) of the regular monthly charge for each day, or fraction thereof, for the service that is effected to the subscriber, after receipt of notification of a loss of service until the service is restored, unless restoration is prevented by cause beyond the control of the Grantee.. Such rebate shall be made by the Grantee following notification to the Grantee by the subscriber identifying the loss of service by channel description and date and time.

6.6 Covenant not to Discriminate. Grantee covenants that Grantee and its contractors, if any, shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status.

SECTION 7. SUPPORT FOR LOCAL CABLE USAGE

7.1 Local Programming Support. Grantee agrees to pay to the City the amount of one (1%) percent of Gross Revenues as defined in section 2.1(B) to be used in connection with the Local Programming needs of the community as the City deems appropriate. Such payments shall be made quarterly. The subscriber will not be billed this amount. The purpose of this payment is to provide the City with financial support for PEG programming, and the payment is not to be construed as a franchise fee subject to section 622(b) of the Federal Cable Act.

7.2 Public, Educational and Government (PEG) Programming Channels

A. Grantee shall initially make available three (3) PEG channels as part of the basic cable service. In the event that the City at any time during the Franchise Term, fully uses the PEG channels, the City shall be entitled to one (1) additional PEG channel without charge on its subscriber network. For purposes of this Agreement, the PEG Channels shall be deemed to be "fully used" when they are utilized for the transmission of original, non-duplicate PEG Access programming (allowing reasonable play backs and one channel to be used for intermittent, rotating bulletin messages) during 80 percent of an eight-hour period each day Monday through Friday for eight consecutive weeks.

1. The initial three PEG channels shall be in the basic service on the following channel designations throughout the Franchise:

1. Channel 10
2. Channel 15
3. Channel 18

2. Grantee may use such additional channel capacity or any portion thereof at any time that it is not being used by the City; provided however, that notwithstanding Grantee's right to use said PEG channel capacity in the event that it is not being used by the City, at such time as the City requests its return, Grantee shall comply with that request and return or otherwise provide the additional PEG channel capacity within 60 days of the date of the City's request.

3. Rules for use of the local noncommercial channels, or portions of local noncommercial channels shall be promulgated by the City. The City may, at its sole

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CERTIFICATE OF SERVICE

I certify that on the 7th day of March, 2009, I caused a copy of the forgoing Comments of the City of Warren to be served by first-class U.S. Mail, postage prepaid, to the following persons:

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I declare that the statements above are true to the best of my information, knowledge, and belief.



Mary Michaels

Dated: March 7th, 2009